



# University of Hawaii at Manoa

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December 14, 1988  
RP:0102

District Engineer (PODCO-O)  
U.S. Army Corps of Engineers  
Building 230  
Ft. Shafter, Hawaii 96858

Dear Sir:

Application for Army Permit (#2057)  
Kohana-Iki Resort Marina  
North Kona, Hawaii

The applicant proposes to construct a 180-slip marina within the Kohana-Iki Resort community project area. The Kohana-Iki marina complex will consist of a marine basin and entrance channel surrounded by resort-residential and resort-commercial uses. The total project will occupy approximately 48 acres, 17 of which encompass water area. On September 5, 1986, the Final Environmental Impact Statement (EIS) for this project was accepted on the basis that a federal Supplemental EIS would be prepared in conjunction with the issuance of the Army Corps of Engineers permit for the marina. Our review of the permit application incorporates comments from Bion Griffin, Anthropology; Richard Brock, Hawaii Institute of Marine Biology; Yu-Si Fok, Water Resources Research Center; Doak Cox, former Director of the Environmental Center; and C. Anna Ulaszewski, Environmental Center.

The Final EIS for the Kohana-Iki Resort community project stipulates on page I-3 (1.4.3 Near-shore Marine Environment) that, "The full impacts of the proposed marina construction will be the subject of a federal Supplemental EIS prepared pursuant to the granting of a U.S. Army Corps of Engineers permit." Allegedly, the magnitude of the proposed project and the sensitivity of its location require that a federal Supplemental EIS be prepared pursuant to the issuance of a U.S. Army Corps of Engineers permit. The Final EIS further stipulates on page IV-12,

... the construction of the marina development will require the issuance of a U.S. Army Corps of Engineers permit and [emphasis added] the preparation of a federal supplemental EIS, in addition to more detailed

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environmental and engineering studies.... Marina design and related environmental impacts and mitigative measures related to the marina development discussed herein are meant to be of a general nature and are not intended to substitute for more detailed studies to be prepared in conjunction with the aforementioned federal supplemental EIS.

According to Mr. Michael Lee, U.S. Army Corps of Engineers, there are presently no plans to prepare a federal EIS on this project. Instead, negotiations are underway with the developer to modify the project such that an EIS is unnecessary. The only modification which would satisfactorily preclude the necessity of an EIS would be the complete elimination of the marina from the project. Given the integral nature of the marina in the project concept, it is unlikely that the developer will agree to this constraint.

We have noted the several references to a "federal Supplemental EIS". Preparation of a federal Supplemental EIS is required when an existing federal EIS is insufficient due to project modification or changing environmental conditions. In this instance, no federal EIS has been prepared, and none of the triggering mechanisms under the National Environmental Policy Act (NEPA) are invoked by the proposed actions. Thus, it appears that deferral of consideration of the full project impact to such a document was specious, and that conditional acceptance of the Final EIS based upon subsequent preparation of such a document was inappropriate.

We further note that neither Chapter 343, H.R.S. nor Title 11, Chapter 200, Department of Health regulations provide for conditional acceptance of a Final EIS by State or County authorities. Accordingly, there exist no statutory or regulatory provisions for withdrawal of acceptance under circumstances of non-performance of conditions by an agency or an applicant. Since the existing Final EIS is clearly deficient in its consideration of the marina impacts, and since it appears that no "federal Supplemental EIS" is forthcoming, the matter should be remanded to the Mayor of Hawaii County and to the Environmental Council for appropriate resolution.

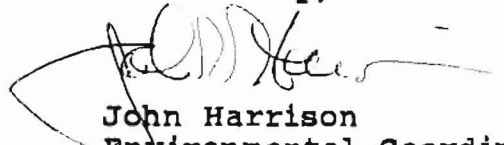
Finally, we note that the Hawaii County Planning Department stipulated in comments on the Draft EIS that "[i]n addition to a Federal EIS, a supplemental EIS under Chapter 343, H.R.S. (State) will also be required" (Final EIS, p. XII-48). In his response to the Planning Department, Mr. Thomas A. Fee of Helber, Hastert, Van Horn & Kimura, Planners, preparers of the project EIS, stated, "[y]our comment is noted and incorporated into the FEIS" (Final EIS, p. XII-50). We have been unable to locate any reference within the Final EIS to a State Supplemental EIS mandated by Chapter 343, H.R.S., as prerequisite to marina construction. However, the explicit acknowledgment of such a requirement in the official

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response to Mr. Lyman's comments leads us to expect that such a document is forthcoming. Of course, preparation of an adequate Supplemental EIS pursuant to Chapter 343, H.R.S., will fulfil the outstanding requirements for full public disclosure of the project impacts and discussion of appropriate mitigating measures.

We thank you for the opportunity to review this permit application, and we look forward to your response to our comments.

Yours truly,

A handwritten signature in dark ink, appearing to read "John Harrison", is written over a large, light-colored, irregular shape that resembles a stylized arrow or a large letter "C".

John Harrison  
Environmental Coordinator

cc: OEQC

Environmental Council  
Hawaii County Planning Department  
Thomas A. Fee,  
Helber, Hastert, Van Horn & Kimura, Planners  
L. Stephen Lau  
P. Bion Griffin  
Richard Brock  
Yu-Si Fok  
Doak Cox  
C. Anna Ulaszewski